

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080341
Plaintiff-Appellee,	:	TRIAL NO. B-0404264-C
vs.	:	
ARTURO LUCERO,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Arturo Lucero presents on appeal a single assignment of error, challenging the Hamilton County Common Pleas Court's judgment overruling his motion to withdraw his guilty pleas. We affirm the court's judgment.

In 2005, Lucero was convicted upon guilty pleas to two counts of trafficking in marijuana and was sentenced to consecutive three-year prison terms. He did not appeal his convictions. Instead, three years later, he filed a Crim.R. 32.1 motion to withdraw his guilty pleas. The common pleas court overruled the motion, and this appeal followed.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

A court may grant a postsentence motion to withdraw a guilty plea only upon a showing of a “manifest injustice.”² The defendant bears the burden of establishing a “manifest injustice.”³ The determination of whether the defendant has sustained his burden is committed to the sound discretion of the trial court and will not be disturbed on appeal unless the court abused its discretion.⁴

Lucero asserted in his motion that his guilty pleas were the unknowing and unintelligent product of his trial counsel’s ineffectiveness. A defendant who seeks to withdraw a guilty plea on the ground that the plea was the involuntary, unknowing, or unintelligent product of his counsel’s ineffectiveness must show, “first, * * * that counsel’s performance was deficient,”⁵ and, second, “that there is a reasonable probability that, but for counsel’s [deficient performance, the defendant] would not have pleaded guilty and would have insisted on going to trial.”⁶

In support of his motion, Lucero offered a copy of the 2007 decision of the Ohio Supreme Court’s Disciplinary Counsel memorializing his trial counsel’s indefinite suspension from the practice of law. Lucero also offered copies of contemporaneous newspaper articles in which counsel had publicly admitted to heavy drug abuse over a course of years that included the period when he had represented Lucero. His trial counsel’s substance abuse, Lucero insisted, had so impaired counsel in preparing for trial that Lucero’s options had been effectively narrowed to losing at trial or entering into a plea agreement.

² Crim.R. 32.1.

³ See *State v. Smith* (1977), 49 Ohio St.2d 261, 361 N.E.2d 1324, paragraph one of the syllabus.

⁴ See *id.*, paragraph two of the syllabus.

⁵ *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.

⁶ *Hill v. Lockhart* (1985), 474 U.S. 52, 59, 106 S.Ct. 366; see *State v. Xie* (1992), 62 Ohio St.3d 521, 524, 584 N.E.2d 715.

The record before us does not manifest the error of which Lucero now complains. We do not have before us a transcript of the proceedings leading to his convictions, because he took no direct appeal from his convictions, and because he did not request that a transcript be prepared for the common pleas court's decision on his motion to withdraw his guilty pleas.⁷ Lucero sought a transcript of his plea and sentencing hearings for purposes of this appeal. But we may not add to the record, and then decide his appeal based on, matter that was not before the common pleas court in ruling on his motion to withdraw his pleas.⁸

Thus, the record does not show that Lucero's trial counsel violated a substantial duty in counseling his guilty pleas,⁹ or that withdrawing his pleas was necessary to correct a manifest injustice.¹⁰ We, therefore, hold that the trial court did not abuse its discretion in denying Lucero's motion. Accordingly, we overrule the assignment of error and affirm the judgment of the court below.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 25, 2009
per order of the Court. _____

Presiding Judge

⁷ See *State ex rel. Partee v. McMahon* (1963), 175 Ohio St. 243, 248, 193 N.E.2d 266; *State v. Hawkins* (July 7, 1975), 1st Dist. No. C-74425 (holding that the state must provide an indigent defendant with a transcript of the proceedings leading to his conviction if a direct or collateral challenge to the conviction is pending before a court).

⁸ See *State v. Ishmail* (1978), 54 Ohio St.2d 402, 405-406, 377 N.E.2d 500, paragraph two of the syllabus.

⁹ See *Strickland*, 466 U.S. at 687, 104 S.Ct. 2052.

¹⁰ See Crim.R. 32.1.